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ABSTRACT

The United Nations Standard Minimum Rules for the Treatment of Prisoners do not express the basic principle that would support a serious educational approach to prison administration. The crucial missing rationale is the concept of the inherent dignity of the individual human prisoner. This concept has certain basic educational implications, culminating in the concept of education directed to the development of the total human personality. Such a concept is quite foreign to contemporary approaches to prison administration. In actual practice, prison education is seen as a tool of incarcerational technology. Prison education, which normally includes both academic and vocational programs inside prison walls, is mostly of inferior quality. Most prison authorities attach little value to conventional educational programs, and the idea of rehabilitation is largely being abandoned. The role of the prison is often reduced to the protection of society. A case for prison education should be approached from the ideas of right and fraternal obligation to fellow men. The educational approach to prison administration possesses characteristics related to these topics: the prisoner as a person, the prison as educational, and the educational model and justice. The Rules should be amended to express recognition of the principle of the dignity of the human person. (YLB)

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# EDUCATION AND CRIMINAL JUSTICE:
# THE EDUCATIONAL APPROACH TO PRISON ADMINISTRATION

## The United Nations Standard Minimum Rules for the Treatment of Prisoners

by

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EDUCATION AND CRIMINAL JUSTICE:
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The United Nations Standard Minimum
Rules for the Treatment of Prisoners

The Standard Minimum Rules for the Treatment of Prisoners, adopted by the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955, and subsequently approved by the Economic and Social Council, did not pretend to be a systematic body of principle and precept. On the contrary, they made up a code of what was, at the time, generally accepted and considered desirable, a kind of conventional wisdom, a rather detailed consensus of the opinion of the day concerning good practice in the treatment of prisoners and the management of prisons. As such, they were a major and heroic advance, and, without doubt, they have been influential in bringing about many important penal and other reforms.

The Standard Minimum Rules are influential not because they are binding on member States, but because they exercise a moral influence on national authorities. Representing, as they do, what the international community considers minimum standards of respectability and decency in the treatment of prisoners, most national authorities would prefer to be in conformity with them. The Standard Minimum Rules consequently tend to become reflected in State legislation and in State prison policy. The evolution of the Rules is therefore of great importance. For it is a matter of much consequence to prisons and prisoners around the world that the Rules are adequate and appropriate, and that they are expressed with the necessary accuracy and intelligibility to achieve their desired effects in terms of the laws and policies of States. In addition, because of the basic principles upon which they rest, the Rules can serve as a constant reminder of the meaning and purpose not only of penal practice and administration, but of penal justice as well.

This paper examines the Rules from the point of view of an educational approach to prison administration. It concludes that the existing Rules require clarification to ensure that their interpretation and implementation are in keeping with the concept of the dignity of the human person, with Article 13 of the International Covenant on Economic, Social and Cultural Rights, which declares "that education shall be directed to the full development of the human personality...," and with Article 10 of the International Covenant on Civil and Political Rights, which declares that "All persons deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person..." and that "the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation."

The authors of the Standard Minimum Rules did not intend that they should be carved in stone. They foresaw the need for the further development of the Rules on the basis of experience and new insight. This need was recognized by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and has been given expression more recently by the Economic and Social Council and by the United Nations Committee on Crime Prevention and Control which has recommended that topic 5 of the Provisional Agenda of the Seventh Congress on the Prevention of Crime and the Treatment of Offenders, to be held in Milan, Italy, from August 26 to September 6, 1985, be structured "(1) to review the existing standards and norms; (2) to assess the impact achieved, as well as the difficulties encountered in applying these; (3) to consider the need for the formulation of additional standards and norms; and (4) to further study the question of death penalties..." (United Nations General Assembly, Discussion Guide for the Regional and Interregional Preparatory Meetings for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 4 April 1983).

The Committee on Crime Prevention and Control, at its Seventh Session held in March, 1982, decided that the implementation of the Rules and difficulties encountered in their application should be given special attention by the Seventh Congress and the preparatory meetings.

One of the greatest obstacles to the interpretation and therefore to the implementation of the Rules is the lack of an underlying and compelling rationale. The Rules suffer enormously from this deficiency. It is a major weakness, and all the more unfortunate for being unnecessary. It leaves the Rules both open to challenge and subject to misinterpretation and distortion.

It is more than remarkable that the crucial principle missing from the Rules is a concept of the greatest importance to the United Nations: the concept of the inherent dignity of the individual human person. This concept does not appear at all in the Rules of General Application, and it appears only once in the Rules Applicable to Special Categories. Even there, in Rule 60(1), it is not offered as a fundamental principle but in a secondary way and with very limited application. This is not to suggest that the requirements of human dignity are not to some extent provided for by the Rules. It is to suggest rather that their rationale is missing. The main compelling reason for the Rules is omitted. The main principle of their design is lacking. In this circumstance, successful implementation is very difficult, as there is no stated basis of rational argument supporting the Rules, and as various principles can be introduced which may or may not be in keeping with the fundamental and long-standing concern of the United Nations with the humanization of criminal justice and the protection of human rights.

In the area of social resettlement, and particularly in the field of education, the difficulty is immense and very clear. The concept of the inherent dignity of the human person has certain basic educational implications-and not only for prisoners, but for all the actors involved in the criminal justice process (judges, prison administrators, wardens, guards, instructors, professional staff, etc.). Although these implications are usually well-recognized by society-at-large, they are not often accepted by prison administrations.

The concept of human dignity is expressed in the Preamble of the Charter of the United Nations and in Article 1 of the Universal Declaration of Human Rights. It is affirmed also in subsequent instruments, for example, in Article 13 of the International Covenant on Economic, Social and Cultural Rights, and in Article 10 of the International Covenant on Civil and Political Rights, and it is a basic concept of the Helsinki Accords. The concept is to be found also in various resolutions and declarations of a number of international bodies. The dignity of the individual human person has come to be recognized as a universal ideal and as the basis of human rights. And the reason is simple: human dignity is a value which all human beings share in common precisely because they are persons. Respecting human dignity means accepting that a person is a person no matter what. Individuals can always philosophize on the dignity of the child as a person, or the mentally deficient, or the murderer. But the affirmation here of the fact without the proof is not a methodological blunder to be avoided, for it signifies nothing less than the advent of humanity. So that human dignity is neither the product of some arbitrary choice nor the result of some mental caprice or fancy. Human dignity is neither the easy product of some political ideology, some cultural creed or some scientific demonstration. Human dignity is a fundamental and sacred value which imposes itself upon man's faculties and to which he can only respond.

If bioethics, for instance, is so preocuppied with the value and status of the foetus and of the embryo, if it is so concerned about genetic manipulation, euthanasia and in vitro fertilization, it is because of the binding respect commanded by the principle of human dignity. Human dignity is not a right, but the basis of all rights.

What then are the implications of this concept for prison administrations and criminal justice systems? At the most fundamental level, there is the injunction to respect the intrinsic worth of man per se, to attach a sacred value to man and to treat him accordingly, in the fullness of his nature and not just in one of his special aspects, for example, as a worker, or as a consumer, or as a prisoner, and so on, and not limited either by the interpretative concepts of any particular science, psychologized, for example, and reduced to a series of mental states, bodily responses, character traits, religious attitudes, etc.

The dignity of the human person implies such fundamental things as treating man as an end in himself and not just as a means. "So act as to treat humanity, enjoins Immanuel Kant, whether in thine own person or that of another, in every case as an end withal, never as a means only." (1) It implies acknowledging the freedom of individual choice in such matters as social arrangements and familial life, avoiding coercion and other demeaning or humiliating acts. It implies such things and more. It implies also recognizing that the human person is a learning person, all through life, and that learning is essential to human development and fulfilment.

An essential characteristic of human nature is that it is not static. Human life is dynamic, a process of becoming. It is a process of becoming

what it is man's nature to become, both in terms of the world within and the world around. It is a process of realization, of fulfilment. So that the concept of the dignity of the human person implies respect for man not only in his actuality but also in his potentiality. It implies respect for man as he can become and especially as he can become. It is at this point that the educational implications of the concept of the dignity of the human person become very clear. For education in its essence is aimed at human development, at guiding the process whereby people become what they have the possibility of becoming as human persons. That process is above all else a process of learning. So that education, which is pre-eminently and uniquely concerned with learning and human development, education conceived of in genuinely human terms, should be at the heart rather than at the periphery of criminal justice systems in their approaches to prison administration.

It is necessary at this point to say what is meant by education. Why not start with the first meanings of the word, with etymology? Education comes from the Latin educo, are which means, literally, to feed, to nourish, to give vital substance. Educat nutrix, says Varro: the nurse breast-feeds the baby. The child is given something of intrinsic value, which he does not possess but which will nourish him, become part of him, of his total being. But education also comes from educo, ere which means to draw away from. Educit obstetrix: the mid-wife leads the baby from the womb and helps it come into the world. In both senses, the child is expected to be the principal agent of his being and becoming. The process of maturation and growth starts within the living, creative energies of the individual human being. From this point of view then, the nature of education is that someone become someone of quality or value by incorporating quality or value into his being. The more value an item has, the more being it has. Now man, as a person, has numerous potentialities.

The more education contributes to his actualizing these potentialities, the more a human being he will be. The more he realizes himself, the more he makes of himself, the more valuable person he becomes. The measure of his value is not primarily in his doings or making of things, not even in his contribution to society, but in his self-fulfilment or in the actualization of his inner qualities.

There is more. Is there not something which is properly specific to human persons when it is said of them that they need to be nourished, to be educated? And is there not a specific quality which human persons have when it is said of them that they are educated? Of all the answers given in the history of civilizations, there is one which is recurrent: an educated person is a person of judgement. To educate means to develop the ability to judge. For what is dignity without the capacity to value, or freedom without the sense of choosing rightly, or power without the guidance of justice, or reason without judgement? And what is judgement? As Cassirer says of Cusanus:

> "All knowledge presupposes comparison, which, in turn, more precisely understood, is nothing but measurement. But if any contents are to be measured by and through each other, the first, inevitable assumption must be the condition of homogeneity. They must be reduced to one and the same unit of measure; they must be capable of being thought of as belonging to the same quantitative order." (2)

Hence, judging is essentially a process of comparison or measurement. And every act of judgement necessarily implies two things: that which is judged and that by which we judge it. In other words, what is common to all cases of judgement is that there is something which is taken as a principle, that is, as something first, by which we measure something else. Moreover, this something first, this principle, must be known before it can serve as a measure. Thus, whoever does not know what the length of a yardstick is cannot judge whether the object in front of

him is or is not, say, three meters long. The major problems of judgement are always to find what is this something first, and secondly, to apply it. We judge of length by using a length as measure; we judge of art by principles of art. The task of education, primarily, is the discovery of the appropriate principles of judgement.

It is from this perspective of education as judgement that this paper argues the case for intellectual and moral development, and in compliance with Article 26 of the Universal Declaration of Human Rights and with Article 13 of the International Covenant on Economic, Social and Cultural Rights, according to which education "shall be directed to the full development of the human personality". To educate, therefore, is not just to teach facts and skills and rules of conduct. Education is not primarily a matter of memory and submission. Education is not just a matter of transmitting to passive recipients a given cultural and moral tradition. (This would be inconsistent with the concept of human dignity, as it would treat man as less than he can become). Education is not just a matter of schooling or training. Education, aimed at the "full development of the human personality," is a matter of developing the capacities of the student for dynamic intellectual activity and active moral judgement - potentialities capable of either being developed or being left in an undeveloped state. Education, therefore, must provide a method and an environment which will stimulate and enable the student to fashion the instruments of logical thought and of moral reasoning, in the formation of which the student must collaborate. Such collaboration cannot take place in an authoritarian atmosphere of intellectual and moral restraint, where learning is conceived of as simply receiving an intellectual heritage and is subject to the traditions and opinions of the past.

Such collaboration cannot take place either in a totally permissive and relativistic atmosphere. Education as judgement always expresses reality

as existing outside the self. In a way, it means opposition, polarity, antithesis. It offers an alternative to subjective egocentrism by introducing within the epistemic structure of the mind the possibility of "objective" consciousness. From a strictly logical point of view, rational judgement is doubly served here. For one, it is forced into submission by accepting that many worlds exist which are neither identified with nor caused by the self. For another, it is brought to realize that continuous, subjective affirmation is not conducive to progress. Development of the judgemental powers comes about through dialectics, that is, through the consideration and use of contrasting views.

Such collaboration also implies that education as judgement must have a purpose, an end, an aim which can be none other than the total development of the individual person. An education centered exclusively on intellectual or cognitive learning will not necessary lead to a bettering of the total man. A rational adhesion to truth interests reason and only reason in the sense that intellectual knowledge is exclusively preoccupied with truth. Now truth alone is not a prime mover, does not trigger automatic action or conduct, does not effectuate spontaneous reaction toward what is good. "Potest grammatica perfectissima blasphemare Deum" - even the most perfect of grammarians can blaspheme. Clearly, limiting education to intellectual learning or development is insufficient. Only the good can better the entire person. To move toward action, the agent or operator must claim value as his good, desire it with all his might and adhere to it in concrete ways. Thus the sphere of values as educational ends is not the sphere of intellectual knowledge but the sphere of total desire and engagement where the individual person does not aspire to some universal, abstract object, good only for intellectual juggling and delectation. Rather, the good aimed at must be a good that I love for me, that has meaning for me, to which I commit my entire person. The end of education is to better the entire person by committing the energies and potentialities of the entire person.

Moreover, education aimed at the development of the human personality does not proceed very far in a fragmented way. As Piaget pointed out, such education presupposes

> "the existence of a collective environment simultaneously developing the moral personality and representing a systematic source of intellectual exchanges. Real intellectual activity in the form of experiment and spontaneous inquiry cannot, in fact, develop without the free collaboration of individuals, that is, amongst the students themselves and not merely collaboration between the individual student and the teacher. Intellectual activity requires not only constant mutual stimulation, but also, and in particular, mutual control and the exercise of the critical spirit... Logical operations are, in fact, always cooperative operations, and they imply a whole series of intellectual reciprocal relationships, and cooperation which is simultaneously moral and rational". (3)

The concept of education in this paper, education directed to the development of the total human personality, of necessity involves the intellectual, emotional, social and moral domains.

Such a concept is quite foreign to contemporary approaches to prison administration. In this context, there has been much confusion surrounding the nature and the role of prison education. In Part I of the Standard Minimum Rules, education is omitted altogether. In Part II, concerned with "special categories" of prisoners, education is defined as an instrument of treatment (rules 59 and 66) and as schooling (rules 77(1) and (2)). In actual practice, prison education is most often seen as schooling and as a way of operating the prison, as one of the many tools of incarcerational technology. While its institutional presence is more than sporadic, its traces, in terms of human development, are sediments with no evident persistence in the stratum of the various serious attempts at reform, moments of no lasting impact in the discontinuous efforts at change. As a result, attempts to speak of the practice of prison education amount, in fact, to speaking of incarcerational

practice, quite simply. And there are a number of prevailing concepts of the role of prison education which illustrate the correctional ideology. For example, prison education is seen as an obligatory classification of deviation and a gradation of differences; a training of tendencies and discipline of attitudes; an identification of lacunae and isolation of their causes; a privileged technique of moral correction; a studied pretext for establishing criteria of normality; panoptic surveillance and control, exculpatory compensation, economic strategy, etc. All of these, obviously, are linked to the primary orientation of the correctional ideology from which, in fact, they can be separated only as extensions and variants.

In terms of actual practice, educational opportunities consisting of programs for imparting knowledge and skill training are made available in many prisons. Very often, such opportunities are limited to evening time periods, although in some jurisdictions such opportunities, especially for vocational training, are available as a daytime activity. Considerable reliance is placed on correspondence courses and other forms of distance education, although these learning methods are not especially suited to prisons, as they have a very low success rate in the prison environment, due mainly to lack of sustained student motivation.

Prison education as it is actually practiced normally includes both academic and vocational programmes and is conducted inside the prison walls, in prison schools. Academic education typically includes basic literacy training and often secondary school programmes and, occasionnally, courses leading to a university degree. Frequently, the secondary school programmes are incomplete, consisting of condensed courses aimed at imparting basic knowledge and skills required for admission to vocational training or apprenticeship programmes. Vocational programmes typically consist of courses in automobile repair, hairdressing, business machine

repair, carpentry, drafting, electrical wiring, machining, plumbing, small engine repair, television and radio repair, and welding. Commercial courses are sometimes available, including courses in data processing.

According to most studies, from official reports to informal accounts by professional educators who have observed what goes on, prison education programmes are mostly of inferior quality. The manifestations are many: mediocre and poorly-trained professional staff, low expectations, poor educational achievement, watered-down curricula, weak supervision, lack of educational counselling, lack of professional development programmes for educational staff, inadequate resources, and so on. In an evaluation of prison programmes in the USA (4), twenty major problems were identified as obstacles to the development of effective educational programmes for prisoners. The most crucial obstacles were identified as administrative shortsightedness, indifference and neglect.

Attempts to improve educational programmmes have often tended to be exercises in futility, usually ending by legitimizing the status quo, or with the disabling observation that "nothing can be done." That said, acknowledgement must be made of a few outstanding educational programmes in a few prisons, but these are occasional flares in a generally prevailing gloom and are typically the work of gifted and dedicated teachers, rather than the product of policy and planning.

This is especially surprising, because there are empirical grounds for affirming the efficacy of some kinds of prison education. Ross and Gendreau(5) have established that there are some programs which have been highly successful in rehabilitating prisoners, yielding reductions of 30% to 60% in recidivism for follow-up periods as long as fifteen years after program completion. Moreover, Ross and Fabiano(6) have found that

"effective correctional programs can be reliably differentiated from ineffective programs on the basis of the presence or absence of specific cognitive training components in the program."

The fact is, however, that most prison authorities attach little if any real value to conventional educational programs, to say nothing of broader educational approaches. Having tried other approaches without much success, they are understandably reluctant to try another. In the last decade, there has been a growing sense of disappointment in correctional programs following the high expectations of the past for their effectiveness. This has resulted, in practice if not in theory, in the idea of rehabilitation being largely abandoned, so that the only remaining albeit important goal is the protection of society, that is to say, custody.

Rule 58 of the Standard Minimum Rules reads as follows:

> "The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to insure, as far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life."

Unfortunately, this statement of ultimate purpose, which asserts that the most fundamental principle of all is to protect society, and which does not affirm the equal importance of the inherent dignity of the individual human person, is insufficient when it comes to promoting the human development of prisoners. It is in conflict with Article 10 of the International Covenant on Civil and Political Rights; and it does not provide a rational basis for prison education. Lacking such a basis, education, although provided for in many jurisdictions, will continue to be, for the most part, mediocre, ineffectual and inadequate. Thus, the

contemporary disillusion with the correctional model has been rather indiscriminate, resulting in a loss of confidence not only in ineffective programs but also in promising ideas based on a more appropriate model of the prisoner as a person, the prison as an educational institution and education as the approach which holds the most promise of helping most prisoners to the realization of a fuller life.

In recent times, the case for prison education has been approached through the idea of right. Although this recognition is essential, it is not sufficient. Placing all the emphasis on legal right puts the attention in the wrong place and tends to fix it in the wrong direction. For one, the logical conclusion of all rights argumentation lies inevitably in symmetrical opposition, contradiction and stalemate. The absolute realization of right is annihilation of right. But the ultimate danger with the notion of right is withdrawal into the self where real needs can be confused with self-interest, where legitimate claims can spring up in the absence of a genuine love for others.

Of course, from a certain point of view, the prisoner is an enemy of society and, sometimes, depending on the nature of the crime committed, an enemy of humanity. Now we must not deceive ourselves. The natural human reasons for loving one's enemy are practically nil. We could probably go even further and observe how, in his rough and unrefined nature, the human being manifests a more natural and instinctive tendency to apply the laws of reciprocity and vengeance. But the logic of vengeance, as we all know, can only result in more vengeance, in the blind cycle of exponential violence as the impossible answer to violence. In such a context, it becomes increasingly difficult, even impossible, to understand, let alone promote, the idea of a prisoner's right to education.

But there is another, more fundamental way of approaching the question. It consists in looking not only at the idea of right but, more profoundly,

at the moral obligation upon which this right rests, the human obligation to fraternity, to brotherly love, to charitable action towards fellow man. Said differently, the fraternal imperative bases right not on history, or politics, or civil law, or ideology or even functionalist efficiency, but on the radical possibility of being a human person. As Max Scheler(7) puts it, a genuine love for mankind makes no distinction between a fellow-countryman and a foreigner, between a criminal and a just man, between racial value and racial inferiority, or even between good and evil, but loves all men simply because they are men. What is fundamental, therefore, to this idea of fraternal obligation is that it implies the desire and the will to do good even to those who do evil - those who do us evil - those who, to all appearances, do not deserve it.

Undoubtedly, we are not accustomed to this brand of apologetics concerning the right to education or even to the question of rights in general. A certain tradition has habituated us to conceive of the concepts of right and obligation as inseparable correlative terms: a person has no right, it is believed, without there existing, for another person, a corresponding obligation to this right. In actual fact, the apparent antinomy between the two terms exists only from a judicial or legal point of view. The term obligation, here, has a moral connotation and, for this reason, is superior to right. Man has a constant obligation to do good, a fraternal obligation towards his fellow man. It is precisely because of the moral obligations toward children, the disabled, the blind, the mentally handicapped, etc., that these groups of people finally obtain legally recognized rights. Prison education is a right not because the law says so but because the law of fraternal obligation says so.

Anchoring the idea of prison education to the imperative of fraternal obligation is an indication of more fundamental comprehension still. On the one hand, the concept of obligation is a gauge of public morality.

It betrays in a crystalline fashion a community's real moral fibre and metaphysical lining. It reveals the degree of its cultural sophistication and the spiritual ideal it offers its youth. The fraternal obligation a community shows its minorities, the underprivileged, the outcasts, the prisoners is the expression of its interest in the future of humanity. On the other hand, fraternal obligation appeals to an idea of ethical creativity in the strong sense of the word: being attentive and open to a person's needs and wants in order to invent the ways to satisfy them. It is the good of our human brother that, as such, commands all the attention which no "letter of the law", no judicial clause can ever think of exhausting.

Finally, fraternal obligation has so much ascendancy over right that, in the event of a betrayal of right, the only hope that justice will be done comes from our commitment to fraternal obligation. In fact, do not the blunders of morality themselves verify and prove the superiority of fraternal obligation? Those who have been tricked, those who have unjustly lost the just causes they tried to defend, all those whose basic rights have been stepped upon expect from the future, that is, from their blind confidence in the principle of fraternal obligation, that these rights will be dutifully restituted.

Furthermore, as was pointed out earlier, education in the strong sense of the term can neither be restricted to schooling nor be concerned exclusively with prisoners. It is inconceivable as an isolated activity or practice. Education is also, and necessarily, conducive to a profound questioning of the principles of penal justice and prison incarceration.

For example, our philosophy of prison education means rediscovering new insights into penal justice, into the punitive function, into justice as violence. On the notion of punishment, in particular, old questions

are being re-examined. "What", wrote Beccaria in the mid-eighteenth century, "is this right which men assume to slaughter their fellow-men?" In other words, whatever the form it takes, punishment is still one of the great anguishes of modern times. No one has yet successfully justified a phenomenon in which inflicting evil on another person is accepted as a good, as a cause of well-being, as an obligation, in fact, and a duty. Much is being said, today, about punishment as "evil." Although it is defined as a tool against evil, punishment remains, it is noted, an evil, in that it is directed essentially against. Can punishment really go beyond evil, as is suggested by the judicial process? For many, there is much doubt. Punishment actually implies that one who surrenders to it surrenders to evil, contaminates and is contaminated, is himself diminished and diminishes others. More profoundly, punishment seems not only to fail in its effort to effect a radical break with evil, but it manages to separate being and existence, little by little, in a sort of pollution by omission. Because it introduces itself into existence by way of opposition, it is declined in the indicative of the diminished or, more precisely, in that of diminution - because giving and fullness cannot arise out of denial or prevention. Yet giving and fullness are the conditions of being, for being is constant enrichment or it is not. In its first sense, creation means being for, for being, for the expression of being. As evil, an evil against evil, does not punishment appear thus as de-creation, the contrary of creation, indeed, the inversion of creation?

There is more. Punishment is neither an accident nor the whim of some vengeful imagination. On the contrary, it is chosen, studied, prepared with the most meticulous of precautions and attention. The punishment of justice is a product of rational justice and justified as such. And justice, we are being told by new studies, is still made of the same fabric as that to which it is opposed - violence. "Centuries go by before

men realize that there is no difference between their principle of justice and the principle of vengeance." writes René Girard(8). "If our system seems to us more rational." he adds, "it is in fact because it is more strictly aligned with the principle of vengeance. The emphasis on punishment of the guilty has no other meaning." Of course, no one would advocate the abolition of our judicial systems, which are not only useful but indispensable. Attention is simply drawn to the brutal fact that justice is not enough and that the malaise of imprisonment is rooted in the ever-present malaise of punitive justice. And the idea of protection or security as the purpose of imprisonment will continue to provoke contradictory statements as long as our societies remain perplexed by the significance of their punitive prescriptions - however necessary and inevitable these seem - and until our societies discover an effective principle of collective entente and respect which is beyond justice.

In the meantime, some departures from conventional thinking can be recommended. Such is the case with education understood in terms of human development. The educational approach to prison administration possesses a number of characteristics:

i - The prisoner as a person

Under the educational prison model, the prisoner is not perceived of as a criminal in custody but as a person in custody and solely as a person in custody, an individual who, because he has transgressed the codes of a society, by way of punishment, is temporarily prevented from participating in the everyday life of that society. The fact of being in prison does not take away his human dignity: just because he is known to have committed a crime does not mean that he should no longer be respected as a person. The fact of being in prison does not take away his creative potential. In other words, the prisoner is not primarily an immoral

individual, whose status is limited to having defects and deficiencies in need of correction. On the contrary, the educational model sees the prisoner as a person with a unique, energizing potential. And the first goal of education is to bring this creative potential to the fore so that it can be fully developed. Said briefly, prisoners who work, prisoners who study and prisoners who are unemployed are simply workers, students and unemployed persons... who happen to be in prison.

ii - The prison as educational

No matter how perfect an educational program may be, it is doomed to failure if it is limited solely to the prisoners, because prisons are all-encompassing institutions with interrelated and interdependent structures and functions. Each participant has a role to play in the overall plan - administrators, supervisors, guards, classification officers, educators, instructors, support staff, professionals and so on. The educational approach therefore implies that the prison itself must be educated before it can become educational. This means that unless it is able to exert its influence throughout the entire institution, with its host of duties, attitudes, roles and beliefs, the educational approach will not achieve its full potential.

iii - The educational model and justice

Prisons today have a highly ambigious status. On the one hand, they are created to administer justice, penal justice - a justice based on punishment, as we have noted. On the other hand, they are expected to play a role in the prisoner's rehabilitation and social integration. Because it is essentially reconciliatory, in that it emphasizes the good to be brought out rather than the evil to be corrected, the educational approach can encourage prisons to rise above justice in order to serve

justice better and avoid getting caught in the dead end of blind retribution. If to escape from violence, it is necessary to renounce the idea of retribution, it is also necessary to renounce certain forms of conduct which have always appeared natural and legitimate. It seems just, for example, to respond to good with good and to evil with evil, but the results are obvious... Concretely, the adoption of the educational model implies a continued reassessment of the significance of penal justice. The expectation: to help justice "forget" the origins of evil and criminality and, without betraying itself, give greater attention to the values that ennoble humanity - forgiveness, clemency, fraternity, generosity, etc.

## CONCLUSION

The Standard Minimun Rules for the Treatment of Prisoners do not express the basic principle which would support a serious educational approach to prison administration. Unfortunately, the Rules do not provide the rationale which would serve as the foundation of a more humanized and more humanizing approach to the treatment of prisoners. This is no doubt an oversight, considering the United Nations' fundamental and long-standing concern with the humanization of criminal justice and the protection of human rights. But, in the absence of a rational basis for a broader approach to the treatment of prisoners, narrower approaches continue to prevail. Values intrinsic to the dignity of the human person are rarely accorded due importance and hardly ever given necessary priority. A confusion and a misunderstanding of purpose result in distortion and error in method. The role of the prison cannot be reduced to the protection of society. Although that reflects one of the primary purposes involved, it does not recognize the purposes flowing from the nature, needs, potentiality and inherent dignity of the human life in the prison.

In order to implement an educational approach to prison administration, it will be necessary for States to enact legislation setting out that the two primary and equally important purposes of prisons are to hold in humane custody those who have been sentenced to prison by a court, and to encourage, facilitate and promote their development as human persons. To promote and encourage such legislation, it would be helpful if the United Nations amended the Standard Minimum Rules for the Treatment of Prisoners to give express recognition to the principle of the dignity of the human person and to reflect more accurately Article 10 of the International Covenant on Civil and Political Rights.

For now, it would not appear that additional rules are required, but that the missing principle of the inherent dignity of the human person be expressed as a fundamental principle underlying the Rules. This would clarify much and remove a major obstacle to the successful implementation and application of the Rules, namely, a lack of understanding of the basic purposes involved.

The following Addendum is accordingly proposed to the Standard Minimum Rules for the Treatment of Prisoners:

## Part I
## RULES OF GENERAL APPLICATION
### Basic Principle

6(3) Every person shall be regarded as having an intrinsic dignity and value in himself, regardless of his condition, and entirely apart from any institutional or social objectives he may serve.

6(4) Penal institutions shall have, as one of their essential purposes, at least equal in importance to any other purpose, to facilitate and encourage the development of the individual human person.

## REFERENCES

1. Immanuel Kant, Groundwork of the Metaphysic of Morals, trans. H.J. Paton, N.Y., Harper Torchbooks, 1964.

2. Ernst Cassirer, The Individual and the Cosmos in Renaissance Philosophy, N.Y., Harper Torchbooks, 1964.

3. Jean Piaget, "The Right to Education in the Modern World", in Freedom and Culture, N.Y., Books for Libraries Press, 1971.

4. R. Bell et al., Correctional Education Programs for Immates: National Evaluation Program, Phase I, Washington, National Institute of Law Enforcement and Criminal Justice, U.S. Department of Justice, 1979.

5. R.R. Ross and P. Gendreau, Effective Correctional Treatment, Toronto, Butteworths, 1980.

6. R.R. Ross and E. Fabiano, Effective Correctional Treatment: Cognitive Components, Ottawa, University of Ottawa, Department of Criminology, 1982.

7. Max Scheler, De la sympathie, Paris, Payot, 1950.

8. René Girard, Violence and the Sacred, Baltimore, The Johns Hopkins University Press, 1977.